IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3260 OF 1991

1. N.N. Wadia
2. Mrs. Maureen N. Wadia
3. Rajesh Batra
4. H.S. Srinivas
   Trustees of F.E. Dinshaw Charities
   having their office at
   412, Churchgate Chambers,
   5, Sir Vithaldas Thackersey Marg,
   Bombay-400 020.

5. N.N. Wadia
   Administrator of the Estate of
   late F.E. Dinshaw
   having his office at
   412, Churchgate Chambers,
   5, Sir Vithaldas Thackersey Marg,
   Bombay-400 020.

The Petitioners through their
Constituted Attorney Shri Nandlal Rohira
having his office at 412, Churchgate
Chambers, 5, Sir Vithaldas Thackersey
Marg, Bombay-400 020. .. Petitioners

V/s

1. Union of India

2. Mustafa Pasha
   Tax Recovery Officer No.15

3. Standard Chartered Bank
   having their office at
   305, Dr. Dadabhoy Naoroji Road,
   Fort, Bombay-400 001.

4. Anish Constructions
   a partnership firm of Builders
   and Contractors, having their
   office at 14-B, Rathod Niketan,
   M.G. Road, Bombay-400 067. .. Respondents

Mr.Shiraj Rustomji with Mr.S.B. Amin for the Petitioners.

Mr.A.N. Kontangale for Respondents No.1 and 2.

Respondent No.3 served.

Mr.J.M. Dwij i/b Mahimtura & Co. for Respondent No.4.

CORAM : H.L. GOKHALE & J.P. DEVADHAR, JJ.

DATE : 4TH SEPTEMBER 2006

ORAL JUDGMENT: (Per H.L. Gokhale, J.)

1. Heard the counsel for the parties.

2. Petitioners No.1 to 4 are the Trustees of F.E. Dinshaw Charities and Petitioner No.5 is the Administrator of the Estate of late F.E. Dinshaw. They decided to sell a part of their property situated at Malad to Respondent No.4. An agreement in that behalf was entered into on 13th April 1987. The total consideration was Rs.5,25,000/-. The agreement amongst others provided in clause 9 that the price paid would be refunded only in the event of two contingencies, namely that the final sale not being awarded to Respondent No.4 by the Charity Commissioner or the permission being refused by the Reserve Bank of India.

3. It has so transpired that the Charity Commissioner directed that the offers be invited by public advertisements. Accordingly, an advertisement

was given and the offer of the 4th Respondent was found to be the highest. That was accepted for the same amount of Rs.5,25,000/-. Subsequently the Petitioners applied for sanction to the Charity Commissioner under section 36(1)(i) of the Bombay Public Trust Act.

4. During the pendency of this sanction application, the 2nd Respondent issued a prohibitory order on 7th October 1991. That order was supposed to be under Rule 26(1)(i) of the Second Schedule to the Income Tax Act. The 4th Respondent was supposed to be in arrears of tax to the tune of Rs.21,45,966/- and, therefore, this order was issued as a sort of a garnishee order restraining the Petitioners from making payment to Respondent No.4. The order called upon the Petitioners to make payment of Rs.21,45,966/- or to the extent of amount of Respondent No.4 lying with the Petitioners. The Petitioners entered into necessary correspondence with the 2nd Respondent and pointed out that there was nothing due and payable from them to the 4th Respondent. In fact, they were to receive the amount for the sale of the property. The correspondence was without any effect and the 2nd Respondent issued a second order on 23rd October 1991 again to the same effect. This time it was addressed to the Standard Chartered Bank, the bankers of the Petitioners, and called upon them to make the payment of Rs.5,25,000/- to the concerned Tax Officer.

It is at this stage that the Petitioners filed the present petition which came up for consideration before a Division Bench and an interim order in terms of prayer (b) was passed on 31st October 1991 restraining the bankers from making any such payment. It is another matter that subsequently the Charity Commissioner accorded the sanction on 27th April 1992. The Reserve Bank of India also accorded the sanction on 30th June 1992 and the conveyance has also been executed on 14th October 1992.

5. Mr.Rustomji, learned counsel appearing for the Petitioners, submits that an occasion to issue the kind of a notice and to attach the monies of such a defaulting assessee in the hands of a third party would arise if any such money was due and payable from the third party to the concerned assessee. In the present case, nothing was due and payable from the Petitioners to Respondent No.4. The Petitioners had in fact received the money for sale of their property. There was no debt of Respondent No.4 in the hands of the Petitioners, which the Petitioners could be restrained from paying the same to Respondent No.4.

6. Mr.Kotangale for the Revenue submitted that Respondent No.4 has admitted certain liability before the Settlement Commissioner and, therefore, there was no

occasion to enforce the notices any longer. That is the approach of the Revenue, but the fact remains that the two notices were totally uncalled for in the facts and circumstances of the case inasmuch as nothing was payable from the Petitioners to Respondent No.4 and, therefore, the two orders of attachment were not called for at all.

7. In the circumstances, we allow this petition and quash and set aside the two notices. Rule is made absolute in terms of prayer (a). There will be no order as to costs. The bank guarantee given by the Petitioners, when the stay was granted, will stand discharged.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR J.)